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OCT 12 2017	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY:	DEPUTY

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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 THOMAS HILLERY, an individual, and as
12 Guardian Ad Litem for MARY JANE
13 HILLERY, an adult,

14 Plaintiffs,

15 vs.

16 Case No.: 2:17-cv-2639

17 SUN CITY ANTHEM COMMUNITY
18 ASSOCIATION, INC.; DOE INDIVIDUALS
19 1 through 100; ROE BUSINESS ENTITIES
1 through 25, inclusive,

20 **COMPLAINT**

21 Defendants.

22 COMES NOW Plaintiffs THOMAS HILLERY (“TOM”) as an individual, and as
23 GUARDIAN AD LITEM for MARY JANE HILLERY (“MARY JANE”) (collectively,
24 “Plaintiffs”) by and through her attorney Nicolas R. Donath, Esq. of N.R. Donath & Associates

25 **COMPLAINT**

1 PLLC and complains against the SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC.
 2 (“SCA” or “Defendant”) as follows:

3 **JURISDICTION AND VENUE**

4 1. Plaintiffs brings this action under the Americans with Disabilities Act, 42 U.S.C. §12101,
 5 *et seq.* (“ADA”), the Fair Housing Act, 42 U.S.C. §3601. *et seq.*, the Fair Housing Amendments
 6 Act of 1988, 42 U.S.C. §§ 3610-3614, 3614(a) (“FHA”), and Nevada state law.

7 2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 because this civil
 8 action arises under the laws of the United States, as the ADA and FHA claims are federal laws
 9 presenting federal questions and 28 U.S.C. §1337 as supplemental jurisdiction over state law
 10 claims.

11 3. Venue is appropriate in this judicial district because the events that gave rise to this
 12 Complaint occurred in Clark County, Nevada, located in this federal judicial district.

13 **PARTIES**

14 4. Plaintiffs are United States citizens and have resided at all times during the period in which
 15 the facts and circumstances giving rise to the allegations contained in this Complaint and continue
 16 to reside in a single family home in Sun City Anthem, Henderson, Nevada 89052 in Clark County
 17 (“Property”). Plaintiffs’ residence is located within Defendant SCA. The Property is held in a
 18 trust and both MARY JANE and TOM have a legal pecuniary interest and/or ownership in the
 19 Property.

20 5. Plaintiff MARY JANE’s interests are represented herein by her son TOM who has been
 21 duly appointed as her Guardian Ad Litem under NRS 12.050(3) by Eighth Judicial District Court
 22 Order (Clark County, Nevada) in case number G-17-048232-A for the purposes of this litigation.

23 6. Defendant SCA is the homeowners association in which the Plaintiffs reside, located in
 24 Clark County in the city of Henderson, Nevada. SCA is a Nevada corporation that, at all times

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1 relevant herein, operates and does business in the State of Nevada. Upon information and belief,
 2 SCA contains approximately 7,000 (seven thousand) homes.

3 7. Defendant SCA maintains, manages and operates several facilities and common area
 4 grounds (“SCA Facilities”). Among these facilities is Anthem Center (“Center”), a large multi-
 5 purpose complex that houses a fitness center (gym, indoor track, lockers, indoor/outdoor pools and
 6 spa), activities and meeting rooms (used at times, among other things, for Alcoholics Anonymous
 7 meetings open to the public), library, public restaurant (with signage having read “open to public”),
 8 and a ball room (used at times, among other things, as a polling place for voting). Additionally,
 9 events open to and advertised to the public include, but are not limited to, a HopeLink of Southern
 10 Nevada event (2-28-15), a blood drive (6-29-15), an Art and Crafts Fair (4-8-17), Woofstock 2017
 11 (4-23-17), musical performance by Kelly Clinton (8-15-17), other musical performances, the
 12 Smith Region Celebration/Benz Bash (8-29-17), and a parking lot sale (9-16-17). As such, the
 13 Center and other SCA Facilities are places of public accommodation as defined in 42 U.S.C.
 14 §12181(7), 28 C.F.R. §36.104 and under NRS 651.050.

15 8. SCA is governed by its Board of Directors (“Board”) who are responsible for most of the
 16 decisions and actions about which the Plaintiffs herein complain.

17 9. Defendants DOE INDIVIDUALS 1 through 100 are persons whose conduct gives rise to
 18 this Complaint; these DOE individuals are persons who participated in the conduct alleged herein.
 19 Specifically, the currently un-named DOE Defendants are those who may have caused or may
 20 continue to cause acts of discrimination based upon MARY JANE’s disability and other violations
 21 of state and federal law herein alleged. The Plaintiffs reserve the right to amend this Complaint to
 22 name these individuals when their identities are ascertained.

23 10. ROE BUSINESS ENTITIES 1-25 are business entities whose conduct gives rise to the
 24 allegations contained in this Complaint. Specifically, the currently un-named ROE Defendants

25 COMPLAINT

1 are those who may have caused or may continue to cause acts of discrimination based upon MARY
 2 JANE's disability and other violations of state and federal law herein alleged. The Plaintiffs
 3 reserve the right to amend this Complaint to name these individuals when their identities are
 4 ascertained.

5 **GENERAL ALLEGATIONS**

6 11. SCA is governed by its Covenants, Conditions Restrictions ("CCRs") and Bylaws, which
 7 impose contractual obligations upon SCA and its residents. Generally, SCA has a duty to provide
 8 services and amenities for its residents and its residents have a duty to pay quarterly homeowners
 9 association ("HOA") dues and adhere various rules and regulations.

10 12. TOM and MARY JANE are paid and current on all their HOA duties and upon information
 11 and believe prior to the events described herein have never an issue adhering to the CCRs.

12 13. The Center contains a fitness area which is monitored by a separate controlled entrance
 13 that is manned by one or two employees at almost all times to check resident activities cards.

14 14. Located within the fitness area are the indoor/outdoor pools and spa (the "Aquatic
 15 Facilities"), gym, indoor track, and locker rooms.

16 15. Also within the Center there are meeting rooms, a restaurant, ball room, library, and many
 17 public areas.

18 16. MARY JANE, a former Lieutenant Colonel in the United State Army, is now 86 years old.
 19 Sometime after her retirement, in March of 2008, MARY JANE and TOM moved to Henderson
 20 and purchased a home in Sun City Anthem, primarily because of the wide-ranging and numerous
 21 amenities the Center had to offer an active adult in her seventies.

22 17. Until she was banned by SCA in 2016, MARY JANE's life revolved around her daily trips
 23 to the Center. She made many friends and actively participated activities such as the Veterans

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 25 **COMPLAINT**

1 Group, current events classes, Scrabble Club and birthday gatherings. MARY JANE also availed
 2 herself of the gym, aquatic facilities, lounge, and television.

3 18. TOM is MARY JANE's only living relative. On November 30, 2011, more than five and
 4 one half years ago, MARY JANE signed and notarized a Nomination of Guardian, nominating
 5 TOM to be her guardian of the person and/or estate should it ever become necessary.

6 19. Years later, around 2014, MARY JANE became afflicted with a cognitive disability,
 7 diagnosed as Early Senile Dementia ("ESD"). While ESD does not impact her physical abilities,
 8 it tremendously diminishes her short term memory and she is largely unable to retain new
 9 information.

10 20. Sometime prior to January 28, 2016, MARY JANE became dehydrated in the spa at the
 11 Aquatic Facilities, apparently because she had forgotten how long she was in the hot water. A
 12 member of the Center's staff called 911 and she was transported to the hospital emergency room.

13 21. In a January 28, 2016 letter, Lori Martin, Community Association Manager of the Center
 14 informed MARY JANE and TOM that MARY JANE was to be banned from all spas and pools
 15 located in any SCA Facilities. This decision to deprive MARY JANE of a valuable property right
 16 was made without notice as to what part of SCA's rules MARY JANE actually violated. However,
 17 at that time, MARY JANE was free to use the remainder of SCA's facilities and her activity card
 18 was not suspended.

19 22. Although the January 28, 2016 letter promised TOM and MARY JANE a hearing date to
 20 be "set in the near future," none was held for MARY JANE.

21 23. On March 1, 2016, Nav Sharda, MD ("Dr. Sharda"), MARY JANE's physician, examined
 22 her and provided her a report. In his report, Dr. Sharda stated that MARY JANE "has done very
 23 well" since the dehydration, "has good overall health," and "there is no medical contra-indication
 24 to restrict sauna or whirlpool activities." Dr. Sharda did suggest MARY JANE be accompanied

25 COMPLAINT

1 by someone else when she used the Aquatic Facilities. Additionally, Dr. Sharda has contended
 2 that social interaction is vital to stemming the progression of MARY JANE's illness. MARY
 3 JANE provided Dr. Sharda's report to SCA.

4 24. As of Dr. Sharda's March 1, 2016 report, SCA knew or should have known the nature of
 5 MARY JANE's disability as it specifically states that MARY JANE suffers from Dementia
 6 without behavioral disturbances.

7 25. MARY JANE's ESD results in her total lack of ability to remember that she was banned
 8 from using certain parts of the Center. Therefore, SCA created a rule with which MARY JANE
 9 was and is unable to comply.

10 26. On or about March 16, 2016, SCA required MARY JANE to sign a document entitled
 11 "Informed Consent, Release and Waiver" wherein MARY JANE and TOM willingly released
 12 SCA from liability in conjunction with SCA's granting permission to MARY JANE to use the
 13 SCA Facilities with a caregiver. At that time, SCA allowed MARY JANE to re-enter the Aquatic
 14 Facilities with a caregiver.

15 27. Requiring a caregiver to escort MARY JANE to the Center for her average visit of four
 16 hours would impose an unaffordable cost on her that ranges from \$15 to \$25 per hour, or
 17 approximately \$60 to \$100 per day, even if it were possible to schedule a caregiver for all the
 18 different events and times MARY JANE likes to attend.

19 28. Upon information and belief, sometime later in March or April of 2016, SCA terminated
 20 the services of its outside management company and moved management functions in-house.

21 29. On June 1, 2016, SCA's Community Standards Manager, Chris Wikoff, sent a letter to
 22 TOM and MARY JANE claiming that MARY JANE has "been attempting to utilize the fitness
 23 areas unsupervised." The letter goes on to state that the staff "is repeatedly spending time
 24 monitoring the activities of Mrs. Hillery in the fitness areas and trying to make sure Mrs. Hillery

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1 is not in the pool area and/or in some area that would be unsafe for her.” Therefore, without further
 2 notice or hearing, the ban on the Aquatic Facilities suddenly expanded to contain the vague term
 3 “some area” that would be unsafe for MARY JANE.

4 30. Further, the June 1, 2016 letter stated there would be a hearing of the “Covenants
 5 Committee” regarding MARY JANE on June 8, 2016.

6 31. The June 1, 2016 letter gave TOM and MARY JANE woefully short notice of a June 8,
 7 2016 hearing and therefore they were unable to attend. However, on June 8, 2016, they learned
 8 the result of the hearing, when the Community Standards Department sent an unsigned letter which
 9 informed TOM and MARY JANE that MARY JANE’s rights to use the fitness room and Aquatic
 10 Facilities had been terminated – with or without a caregiver. That letter cited NRS 116.3102 and
 11 116.3103. No reason had ever been given why MARY JANE could not use the non-aquatic
 12 workout facilities which are also located in the fitness area.

13 32. On June 23, 2016, TOM and MARY JANE properly appealed that decision to SCA’s Board
 14 of Directors (the “Board”).

15 33. In a June 27, 2016 letter, Board President Rex Weddle reinstated MARY JANE’s rights to
 16 use the fitness room and Aquatic Facilities subject to the limitation that she be supervised at all
 17 times in all of SCA’s facilities. This meant that MARY JANE could not even attend her favorite
 18 clubs and meetings. She was not even allowed to watch television without supervision.

19 34. However, the June 27, 2016 letter warned TOM and MARY JANE that should MARY
 20 JANE attempt to use the fitness area and Aquatic Facilities unsupervised, the sanction would be
 21 reinstated, and that fines and/or additional sanctions may be imposed. The language of the letter
 22 essentially requires a caregiver to “not leave [Mrs. Hillary’s] side” – presumably including when
 23 she takes a shower or uses the bathroom in the locker room.

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1 35. MARY JANE and TOM attempted in good faith to provide MARY JANE with a caregiver
 2 so she could continue to visit the Center. However, this was not a viable solution because, given
 3 the nature of MARY JANE's disability (she cannot remember that she is not permitted to go to the
 4 Center on her own), she would need to have a caregiver at home all of the time solely for the
 5 purpose of visiting the Center. This would have been completely unaffordable for MARY JANE.
 6 Further, having a caregiver on duty full time at home simply to escort MARY JANE to the Center
 7 would be unnecessary because MARY JANE does not require a caregiver.

8 36. Therefore, MARY JANE has been and continues to be punished as a direct result of her
 9 disability. There is no evidence that supports the need for MARY JANE to have a caregiver by
 10 her side at all times in the non-aquatic parts of the Center or any other SCA facility.

11 37. No explanation has ever been given to TOM and MARY JANE as to how MARY JANE's
 12 attempt(s) to access the fitness center as a result of her ESD affects the "health, safety and welfare
 13 of the community."

14 38. On July 13, 2016, SCA sent TOM and MARY JANE a letter threatening to levy large fines
 15 "every seven days." In that letter, the Board angrily cited "eight different occasion[s] from July 1
 16 to July 9, 2016, [MARY JANE] attempted to gain access to the SCA fitness and/or aquatic facilities
 17 without accompaniment."

18 39. SCA continued to cite the emergency call from January of 2016 when MARY JANE
 19 became dehydrated in the spa in order to rely upon "health, safety and welfare" of the community
 20 as the reason they are excluding her from the Center.

21 40. On July 28, 2016, the Board held another hearing regarding MARY JANE.

22 41. On July 29, 2016, the Board issued its decision. The Board levied a \$250.00 fine, issued a
 23 90-day suspension, and revoked both TOM's and MARY JANE's activities cards. No reason has
 24

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1 ever been given to TOM as to why he should ever have been deprived of any right or privilege as
 2 an SCA dues-paying resident.

3 42. According to this July 29, 2016 decision, Both TOM and MARY JANE were not only
 4 banned from using any part of the Center, but from all SCA facilities; indoors and out, parks and
 5 parking lots (“SCA Facilities”). Thus, the Board deprived TOM of his right to use the SCA
 6 Facilities without proper notice and hearing.

7 43. MARY JANE continued to be unable to comply with SCA’s edict as a result of her
 8 disability.

9 44. On October 5, 2016, SCA sent TOM and MARY JANE another letter noticing an October
 10 27, 2016 hearing, accusing her of defying their order “on numerous occasions” in September. In
 11 reality, upon information and belief, it was just three times.

12 45. Since the original January 2016 incident in the spa, the staff have been informed of MARY
 13 JANE’s disability and her spa incident. As a result, SCA has successfully prevented MARY JANE
 14 from using the Aquatic Facilities. However, staff members have threatened MARY JANE and
 15 TOM with calling the police should they enter the Center.

16 46. On October 27, 2016, TOM and MARY JANE attended the Board’s hearing with counsel.

17 47. At the October 27, 2016 hearing, the Board doubled down on their hostility toward TOM
 18 and MARY JANE. At this time, the Board provided yet another new rational for banning MARY
 19 JANE—by pointed out that one time MARY JANE could not find her car in the parking lot, which
 20 imposed some type of contrived safety issue.

21 48. Citing the ADA and FHA, MARY JANE’s counsel stated that MARY JANE was due
 22 reasonable accommodation. MARY JANE’s counsel stated that MARY JANE would accept a
 23 permanent ban from the Aquatic Facilities, but the separate controlled entrance plus some
 24 awareness by the staff was sufficient to keep MARY JANE from using the spa and that there was

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1 no other danger. MARY JANE's counsel also stated that requiring MARY JANE to have a
 2 caregiver by her side at all times, everywhere, and at the SCA Facilities, was an onerous,
 3 unnecessary and unreasonable condition and imposition of costs – not an accommodation by SCA
 4 in any way.

5 49. On November 7, 2016, apparently deaf to the TOM and MARY JANE's pleas, SCA sent
 6 TOM and MARY JANE a letter stating that they were adding *another* \$250 fine and continuing
 7 the ban and suspension of all SCA Facilities for both TOM and MARY JANE.

8 50. Given that the SCA Board members are largely age-qualified residents and in addition to
 9 some of their own statements in the hearing, upon information and belief, the Board is well aware
 10 of the implications of ESD. However, SCA continued to treat MARY JANE as if her disability
 11 did not even exist by imposing fines based on actions she took as a result of her handicap.

12 51. On November 21, 2016, counsel for TOM and MARY JANE wrote the Board and made a
 13 formal request for minutes of all hearings, put SCA on notice that it could be found in violation of
 14 federal law, pointed out that there was no legal or contractual ground for the Board to ban TOM,
 15 put SCA on notice that TOM and MARY JANE have suffered significant financial hardship as a
 16 result of SCA's actions, and made a formal proposal in writing to comply with SCA's CCRs to
 17 reach mandatory mediation in front of the Real Estate Division.

18 52. TOM and MARY JANE then made a written proposal to SCA to satisfy the CCR's
 19 requirements to sign a complete waiver of liability in favor of SCA. A reply was requested by
 20 November 30, 2016. SCA failed to respond until counsel for TOM and MARY JANE received a
 21 letter dated December 16, 2016 from SCA's counsel John Leach Esq. which, in four pages, said
 22 essentially nothing new.

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1 53. On February 8, 2017, counsel for TOM and MARY JANE wrote back to SCA counsel to
 2 once again try to resolve the matter without litigation, citing case law to support the legal basis of
 3 TOM and MARY JANE's position.

4 54. SCA's reply to MARY JANE's and TOM's counsel's letter on March 2, 2017, once again,
 5 offered no compromises or solutions. Therefore, on March 9, 2017, counsel for TOM and MARY
 6 JANE put SCA on formal notice (by certified mail) that it would request a hearing at the Board's
 7 March 23, 2017 meeting and make one final proposal to SCA in an attempt to stave off litigation.

8 55. In the meantime, the Center, as it does for every election, became a public polling place
 9 for the primary election in March of 2017. TOM and MARY JANE, through counsel, made a
 10 special request to use the Center to exercise their right to vote. After initially requiring that TOM
 11 and MARY JANE make an appointment to vote in order to be granted an exception to enter the
 12 Center, SCA, after some prodding by MARY JANE's and TOM's counsel, changed its mind and
 13 allowed them to vote at their convenience.

14 56. TOM and MARY JANE, along with their counsel, attended the March 23, 2017 hearing to
 15 ask for reconsideration of the SCA Board's prior decisions. In addition to the waiver of liability
 16 TOM and MARY JANE initially proposed, they added that they would agree that MARY JANE
 17 would no longer use the Aquatic Facilities, but asked the SCA Board to allow them back in the
 18 Center at large – again proposing reasonable accommodations.

19 57. On March 29, 2017, SCA counsel informed TOM and MARY JANE of the Board's final
 20 decision. SCA conditionally agreed to restore TOM's privileges and waive the fines *only if* no
 21 further violations occurred within six months, thereby continuing to attach MARY JANE's actions
 22 to TOM's rights and privileges. The Board adamantly continued the ban on MARY JANE absent
 23 a fulltime caregiver.

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1 58. Upon information and belief, sometime in April of 2017, SCA placed signs inside the
 2 Center that limit a portion of the Center to members and guests. The new signs read: "SCA
 3 residents and their guests only beyond this point."

4 59. On June 16, 2017, TOM and MARY JANE through counsel began the ADR process with
 5 the Real Estate Division, serving the same on opposing counsel for SCA which was then the
 6 Clarkson Law Group.

7 60. SCA, through new counsel, completed its ADR Respondent Form on or about July 14,
 8 2017. Subsequently, mediation was conducted on August 11, 2017, pursuant to the rules in the
 9 SCA CCRs and the State of Nevada Real Estate Division.

10 61. At mediation, MARY JANE proposed a third reasonable accommodation (the first two
 11 accommodations were accepting ban from Aquatic Facilities only and/or signing a full iron clad
 12 waiver of liability); MARY JANE requested that SCA hire one or two attendants to assist those
 13 with similar disabilities so that they can locate meeting rooms and other facilities while they are
 14 in the Center.

15 62. Not only did SCA not agree to any accommodation, but it informed MARY JANE and
 16 TOM that, in spite of the mediation rules, it participated in mediation with no authority to
 17 negotiate, but only had the power to waive accessed fees.

18 63. Accommodating MARY JANE in any of the ways she has requested would neither place
 19 an undue burden on SCA, nor would it fundamentally alter the nature of SCA's business.
 20 Additionally, accommodating MARY JANE for her handicap/disability in a number of ways
 21 would not pose a direct threat to SCA, its employees, or its members.

22 64. Rather than act with decency, compassion and humanity, in a perplexing display of
 23 extraordinary callousness, SCA has discriminated against MARY JANE on numerous occasions
 24 based on her disability. In more than one of SCA's Board meetings, members of the Board of

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1 Directors accused MARY JANE of trying to “sneak into the gym area,” referred to her rescue from
2 the Spa as “fishing her out,” and berated her for leaving the room in one of her group meetings to
3 go to the bathroom and coming back and sitting in someone else’s chair.

4 65. SCA is a large age qualified community and, upon information and belief, it is probable
5 that MARY JANE’s disability is not unique to SCA.

6 **CLAIMS FOR RELIEF**

7 **FIRST CLAIM**

8 (Discrimination based on disability under Federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*)

9 *Count One – as by Mary Jane Hillery*

10 66. Plaintiffs re-allege the allegations contained in Paragraphs 1- 65 and incorporate them
11 herein.

12 67. MARY JANE suffers from Dementia, a handicap as defined by 42 U.S.C. § 3602(h)(1-3)
13 because her major life activities of thinking, recalling and concentrating are significantly
14 diminished.

15 68. MARY JANE resides in a home subject to the SCA homeowners association which is a
16 “dwelling” within the meaning of 42 U.S.C. § 3602(b).

17 69. The Center provides SCA residents like MARY JANE with services and facilities
18 connected to such a dwelling and therefore SCA is prohibited from discriminating against MARY
19 JANE based on handicap or disability pursuant to 42 U.S.C. § 3604(f)(2)(A).

20 70. By banning MARY JANE from the Center and other SCA facilities and property without
21 making reasonable accommodations, SCA has discriminated against MARY JANE based on her
22 handicap and disability as is defined in 42 U.S.C. § 3604(f)(3)(B) and in violation of the Federal
23 Fair Housing Act.

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1 71. The actions complained of constitute a continuing pattern and practice of repeated and
2 continuing FHA violations in that the Defendant has engaged in a systematic and consistent pattern
3 and practice of banning, fining, threatening cumulative fines, and establishing edicts and rules
4 directed against MARY JANE with which, due to her handicap and disability, she is unable to
5 comply, as a result of her handicap and disability, all in violation of 42 U.S.C. §§ 3601-3619.

6 72. As a result of Defendant's wrongful conduct, MARY JANE has been injured by
7 discriminatory housing practices by being denied full and equal access to the Center, and is
8 therefore, an "aggrieved person" as defined by 42 U.S.C. as defined by 42 U.S.C. § 3602(i)(1).

9 73. Defendant's conduct, as described above, was intentional, willful and taken in disregard
10 for the rights of others.

11 74. MARY JANE is entitled to any and all remedies available to her under law, including
12 attorney's fees and costs.

13 **SECOND CLAIM**

14 (Discrimination based on disability under Federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*)

15 *Count Two – as by Mary Jane Hillery*

16 75. Plaintiffs re-allege the allegations contained in Paragraphs 1- 74 and incorporate them
17 herein.

18 76. MARY JANE suffers from Dementia, a handicap as defined by 42 U.S.C. § 3602(h)(1-3)
19 because her major life activities of thinking, recalling and concentrating are significantly
20 diminished.

21 77. MARY JANE resides in a home subject to the SCA homeowners association which is a
22 "dwelling" within the meaning of 42 U.S.C. § 3602(b).

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25 **COMPLAINT**

1 78. The Center provides SCA residents like the MARY JANE and TOM with services and
 2 facilities in connection with such a dwelling and therefore SCA is prohibited from discriminating
 3 against MARY JANE based on handicap or disability pursuant to 42 U.S.C. § 3604(f)(2)(A).

4 79. By issuing edicts and fashioning rules with which MARY JANE cannot possibly comply
 5 as a result of her handicap and disability and subsequently fining MARY JANE when she entered
 6 the Center, SCA has discriminated against MARY JANE based on her handicap and disability as
 7 is defined in 42 U.S.C. § 3604(f)(3)(B) and in violation of the Federal Fair Housing Act.

8 80. The actions complained of constitute a continuing pattern and practice of repeated and
 9 continuing FHA violations in that the Defendant has engaged in a systematic and consistent pattern
 10 and practice of banning, fining, threatening cumulative fines, and establishing edicts and rules
 11 directed against MARY JANE with which, due to her handicap and disability, she is unable to
 12 comply, as a result of her handicap and disability, all in violation of 42 U.S.C. §§ 3601-3619.

13 81. As a result of Defendant's wrongful conduct, MARY JANE has been injured by
 14 discriminatory housing practices, and is therefore, an "aggrieved person" as defined by 42 U.S.C.
 15 as defined by 42 U.S.C. § 3602(i)(1).

16 82. Defendant's conduct, as described above, was intentional, willful and taken in disregard
 17 for the rights of others.

18 83. MARY JANE is entitled to any and all remedies available to her under law, including
 19 attorney's fees and costs, pursuant to 42 U.S.C. 3613(c)(2) and 42 U.S.C. 3613(c)(1)(a), and/or
 20 any other applicable law.

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COMPLAINT

THIRD CLAIM

(D) Discrimination based on disability under Federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*)

Count One – as by Thomas Hillery

84. Plaintiffs re-allege the allegations contained in Paragraphs 1- 83 and incorporate them herein.

85. TOM is MARY JANE's son and, upon information and belief, only living relative.

86. TOM resides with MARY JANE in their SCA residence. TOM is designated under law to assist MARY JANE with her needs, financial and otherwise.

87. MARY JANE has been discriminated based on handicap for Defendant's failure to reasonably accommodate her under the FHA as alleged in the First Claim of this Complaint.

88. Therefore, Tom is a person "associated with" a person discriminated upon based on handicap pursuant to 42 U.S.C. § 3604(f)(2)(C).

89. TOM is entitled to any and all remedies available to her under law, including attorney's fees and costs, pursuant to 42 U.S.C. 3613(c)(2) and 42 U.S.C. 3613(c)(1)(a), and/or any other applicable law.

FOURTH CLAIM

(Discrimination based on disability under Federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*)

Count Two – as by Thomas Hillery

90. Plaintiffs re-allege the allegations contained in Paragraphs 1- 89 and incorporate them herein.

91. TOM is MARY JANE's son and, upon information and belief, only living relative.

92. TOM resides with MARY JANE in their SCA residence. TOM is designated under law to assist MARY JANE with her needs, financial and otherwise.

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1 93. MARY JANE has been discriminated based on handicap for Defendant creation of
2 discriminatory rules against her under the FHA as alleged in the Second Claim of this Complaint.

3 94. Therefore, TOM is a person “associated with” a person discriminated upon based on
4 handicap pursuant to 42 U.S.C. § 3604(f)(2)(C).

5 95. TOM is entitled to any and all remedies available to her under law, including attorney’s
6 fees and costs, pursuant to 42 U.S.C. 3613(c)(2) and 42 U.S.C. 3613(c)(1)(a), and/or any other
7 applicable law.

8 **FIFTH CLAIM**

9 (Violation of Title III of the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*)

10 *Count One – as by Mary Jane Hillery*

11 96. Plaintiffs re-allege the allegations contained in Paragraphs 1- 95 and incorporate them
12 herein.

13 97. The Center, outdoor common areas, parking lots, other recreational facilities, as well as all
14 the recreational and other features appurtenant to the various public uses of the restaurant, meeting
15 rooms, ball room, sales offices, public polling areas, and other areas open to public access, are
16 operations which affect commerce, and therefore are “public accommodations” as defined by 42
17 U.S.C. § 12181(7).

18 98. The Center and the common area facilities belonging to and/or operated by Defendant
19 support many public functions and use very few effective barriers preventing the general public
20 from entering facility, rather the general public is often invited to different events the Center,
21 (presumably promoting marketing and sales efforts) and indicating SCA’s purpose to operate a
22 facility that benefits the community at large and their desire to make homes marketable primarily
23 to members of the public who reach the age of 55.

24
25 **COMPLAINT**

1 99. MARY JANE is a disabled person under 42 U.S.C. § 12102 because she suffers from
 2 Dementia which substantially limits her cognitive abilities, including the major life activities of
 3 thinking, short term memory and concentrating.

4 100. SCA has banned MARY JANE from the use of all of its facilities, including but not limited
 5 to indoor and outdoor facilities, meeting rooms, event rooms, the ball room, the restaurant, the
 6 gym, the Aquatic Facilities and any other facility on SCA property because of her disability and is
 7 in violation of 42 U.S.C. §12182(a).

8 101. As such, MARY JANE is not able to receive the full and equal enjoyment of the goods,
 9 services, facilities, privileges, advantages, or accommodations of SCA which is a place of public
 10 accommodation and violates 42 U.S.C. §12182(b)(1)(A)(i).

11 102. MARY JANE does not require any accommodation to avail herself of many of the
 12 activities in which she used to freely participate, but nevertheless has offered to not use the Aquatic
 13 Facilities which were the site of her original medical issue, sign a complete waiver of liability, and
 14 has suggested SCA accommodate those people similarly situated by keeping an attendant on duty
 15 for the convenience of its cognitively impaired visitors.

16 103. SCA has declined to provide a reasonable accommodation, only offering that MARY
 17 JANE can re-enter the facility with a “caregiver at her side at all times,” a demeaning, cost
 18 prohibitive, and completely unnecessary condition – not concession.

19 104. Defendant SCA actions as a representative of older persons occupying more than 7,000
 20 homes have the effect of discriminating against certain people, including MARY JANE, with
 21 cognitive disabilities who would otherwise safely be able to avail themselves of the facilities for
 22 which they pay to enjoy.

23 105. Because SCA continues to this date to ban MARY JANE due to her disability, the
 24 discrimination is ongoing and should be unaffected by any statute of limitations.

25 COMPLAINT

1 106. MARY JANE is an “aggrieved person” and this Court may grant such relief as it considers
2 appropriate, pursuant to 42 U.S.C. § 12188(b)(2)(B), including temporary and permanent
3 injunctive relief, and attorneys’ fees and costs, as a result of Defendants’ wrongful conduct.

4 **SIXTH CLAIM**

5 (Violation of Title III of the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*)

6 *Count Two – as by Mary Jane Hillery*

7 107. Plaintiffs re-allege the allegations contained in Paragraphs 1- 106 and incorporate them
8 herein.

9 108. SCA has levied at least two fines on MARY JANE for violating its discriminatory ban
10 against her use of the Center and other SCA Facilities.

11 109. Because MARY JANE’s disability prevents her from remembering that a ban even exists,
12 the act of sanctioning her with fines her for unintentionally violating a ban she is unable to comply
13 with is in itself a discriminatory act under the ADA.

14 110. Because SCA continues to hold fines over MARY JANE’s head due to her disability, the
15 discrimination is ongoing and should be unaffected by any statute of limitations.

16 111. MARY JANE is an “aggrieved person” and this Court may grant such relief as it considers
17 appropriate, pursuant to 42 U.S.C. § 12188(b)(2)(B), including temporary and permanent
18 injunctive relief, and attorneys’ fees and costs, as a result of Defendants’ wrongful conduct.

19 **SEVENTH CLAIM**

20 (Violation of Nevada Revised Statutes Chapter 651)

21 *As by Mary Jane Hillery*

22 112. Plaintiffs re-allege the allegations contained in Paragraphs 1- 112 and incorporate them
23 herein.

24
25 **COMPLAINT**

1 113. MARY JANE is disabled under NRS 651.050(1) because she suffers from a form of
2 Dementia which is a mental impairment, there is a record of that impairment, and she is regarded
3 as having that impairment.

4 114. Defendant SCA is a place of public accommodation as defined in NRS 651.050(3)(l-o)
5 because it owns and operates a senior citizen center, place of exercise or recreation, is a place to
6 which the general public has been and is invited, and has establishments within its facilities (such
7 as restaurants and meeting rooms) that hold themselves out as serving members of this public.

8 115. MARY JANE is a person who is entitled to the full and equal enjoyment of the goods,
9 services, facilities, privileges, advantages, and accommodations of Defendant SCA without
10 discrimination based on disability pursuant to NRS 651.070.

11 116. MARY JANE continues to be deprived of the use of the SCA facilities and amenities
12 because of her disability, and still has fines outstanding should she, as a result of her disability,
13 forget she has been banned and attempt to access the facility. Therefore, SCA's violations of NRS
14 Chapter 651 against MARY JANE are current and ongoing.

15 117. SCA is liable to MARY JANE under NRS 651.090(1)(a) because it has withheld rights and
16 privileges from MARY JANE secured by NRS 651.070, namely access to the Center, Aquatic
17 Facilities, fitness area, and all other facilities, activities and amenities.

18 118. Pursuant to NRS 651.090(2)(a), MARY JANE requests that this Court grant any equitable
19 relief it deems appropriate, including permanent injunctive relief against Defendant SCA.

20 119. In the actions complained of herein with its conscious disregard for MARY JANE's rights
21 subjecting her to cruel and unjust hardship, SCA has acted with express and implied Oppression
22 and Malice against MARY JANE and therefore is subject to paying punitive damages under
23 Nevada State Law (NRS 42.005).

24

25

COMPLAINT

1 120. Pursuant to NRS 651.090(2)(b), MARY JANE requests that this Court award her
2 reasonable attorney's fees and costs should she prevail in this action.

3 **EIGHTH CLAIM**

4 (Nevada State Law – Breach of Contract)

5 *As by Mary Jane Hillery and Thomas Hillery*

6 121. Plaintiffs re-allege the allegations contained in Paragraphs 1- 120 and incorporate them
7 herein.

8 122. Plaintiffs and Defendant have entered into valid contracts, namely the Covenants,
9 Conditions Restrictions of the Sun City Anthem Community Association as well as the related
10 Bylaws.

11 123. Under these contracts, Plaintiffs are obligated to pay valuable consideration by the way of
12 homeowners' association dues, and Defendant is obligated to provide certain services, including
13 access to its facilities and services.

14 124. Plaintiffs have continued to perform their obligations to pay homeowners' association dues
15 at all times relevant herein.

16 125. Defendant has breached the contract(s) by unreasonably denying Plaintiffs access to its
17 facilities.

18 126. As a result of Defendant's breach of contract, Plaintiffs have sustained financial damages,
19 the exact amount to be determined at trial.

20 **NINTH CLAIM**

21 (Nevada State Law – Unjust Enrichment)

22 *As by Mary Jane Hillery and Thomas Hillery*

23 127. Plaintiffs re-allege the allegations contained in Paragraphs 1- 126 and incorporate them
24 herein.

25 **COMPLAINT**

1 128. Defendant SCA has retained the Plaintiffs' regular payments of homeowners' association
2 dues without providing the Plaintiffs the benefit of the services and facilities for which these dues
3 pay.

4 129. Therefore, Defendant has retained the money and property of the Plaintiffs against
5 fundamental principles of justice, equity and good conscience.

6 130. As a result of Defendant's unjust enrichment, Plaintiffs have sustained financial damages,
7 the exact amount to be determined at trial.

8 **JURY TRIAL DEMAND**

9 Plaintiffs hereby demand a trial by jury.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, for the foregoing reasons, Plaintiffs pray that this Court grant judgment in
12 their favor, and against Defendant, as follows:

13 A. Declare, pursuant to 28 U.S.C. § 2201, that Defendant's actions as complained of herein,
14 violate the FHA, ADA, and the applicable regulations.

15 B. Enjoin, pursuant to 42 U.S.C. § 3613(c)(1)(a), Defendant, its officers, directors, employees,
16 agents, successors, assigns, and all other persons in active concert or participation with any of
17 them, both temporarily during the pendency of this action, and permanently, from banning MARY
18 JANE from SCA facilities wherein she is not a direct threat to any other person;

19 C. Award such damages as would entirely compensate MARY JANE for her injuries suffered
20 as a result of SCA's discriminatory housing practices and conduct pursuant to 42 U.S.C. §
21 3613(c)(1)(a);

22 D. Award such damages as would entirely compensate TOM for his injuries suffered as a
23 result of SCA's discriminatory housing practices and conduct pursuant to 42 U.S.C. §
24 3613(c)(1)(a);

25 **COMPLAINT**

1 E. Award such punitive damages against Defendant as is proper under law pursuant to 42
2 U.S.C. § 3613(c)(1)(a) and NRS 42.005 for discriminatory actions taken against MARY JANE
3 and TOM;

4 F. Award MARY JANE her costs and attorney's fees incurred herein, pursuant to 42 U.S.C.
5 § 3613(c)(2);

6 G. Award MARY JANE any other relief or remedy that this Court deems just and proper;

7 H. Award TOM his costs and attorney's fees incurred herein, pursuant to 42 U.S.C. §
8 3613(c)(2); and

9 I. Award TOM any other relief or remedy that this Court deems just and proper.

10
11 DATED this 11th day of October, 2017.

12
13 Respectfully submitted:

14
15 **N.R. DONATH & ASSOCIATES PLLC**

16
17 By: 

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22
23
24
25 *Attorney for Plaintiffs*

COMPLAINT